941
24

Office-Supreme Court, U.S.
FILED
JAN 24 1966
JOHN F. DAVIS, CLERK

U. S.

NO. 941

IN THE

Supreme Court of the United States

RECEIVED
JAN 24 1966
OFFICE OF THE CLERK
SUPREME COURT, U. S.

October Term, 1965

CRAWFORD COUNTY BAR ASSOCIATION, FINES F. BATCHELOR, JR., PRESIDENT, DAVID O. PARTAIN, VICE-PRESIDENT and N. D. EDWARDS, SECRETARY-TREASURER: and CECIL L. ALEXANDER ..... *Appellants,*

v.

ORVAL E. FAUBUS, GOVERNOR, KELLY BRYANT, SECRETARY OF STATE and BRUCE BENNETT, ATTORNEY GENERAL, as THE BOARD OF APPORTIONMENT of the STATE OF ARKANSAS ..... *Appellees*

On Appeal From the United States District Court for the Eastern District of Arkansas

JURISDICTIONAL STATEMENT
APPELLANT CRAWFORD COUNTY BAR ASSOCIATION

FINES F. BATCHELOR, JR.
411 Main
Van Buren, Arkansas

Attorney for Appellant,
Crawford County Bar Association

YOES PTG. & LITHO. FORT SMITH, ARKANSAS

INDEX

Subject Index

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	4
Statutes Involved	6
Statement of the Case	6
The Questions before the Supreme Court Are Substantial	8
Redistricting in One County, One Member Districts; Multi County, One Member Districts; One County Multi Member Districts; and Multi County, Multi Member Districts	8
Mathematical Formula	13
Additional Guidelines	17
Conclusion	18
Appendices	
A, Memorandum Opinion of January 28, 1965	1a
B, Decree of January 28, 1965	25a
C, Memorandum Opinion of November 4, 1965	27a
House of Representatives as Reapportioned	37a
Senate as Reapportioned	40a
D, Decree of November 4, 1965	42a

Page

E, Constitution of the United 44a

F, Federal Statutes 45a

G, Arkansas Constitution 49a

TABLE OF AUTHORITIES

CASES:

Bailey v. Abington, 201 Ark. 1072, 148 SW2d 176 ..... 7a

Baker v. Carr, 369 U.S. 186 ..... 2a

Butler v. Democratic State Committee, 204 Ark. 14, 160 SW2d 494 ..... 7a, 13a

Davis v. Mann, 377 U.S. 678 ..... 4, 1a, 29a

Faubus v. Kinney, 239 Ark. 443, 389 SW2d 887 . 7, 4a, 22a, 28a

Fortson v. Dorsey, 379 U.S. 433 ..... 32a

Lucas v. Colorado General Assembly, 377 U.S. 713 ..... 4, 16, 19, 1a, 29a

Maryland Committee for Fair Representation v. Tawes, 377 U.S. 656 ..... 4, 1a, 23a, 29a

Reynolds v. Sims, 377 U.S. 533 ..... 4, 10, 15, 1a, 11a, 12a, 29a, 32a

Roman v. Sincock, 377 U.S. 695 ..... 4, 16, 19, 1a, 29a

Pickens v. The Board of Apportionment, 220 Ark. 145, 246 SW2d 556 ..... 6a, 7a, 15a

Shaw v. Adkins, 202 Ark. 856, 153 SW2d 415 ..... 9a, 10a, 11a

Page

Smith v. The Board of Apportionment, 219 Ark. 611, 243 SW2d 755 ..... 14a, 15a

Stevens v. Faubus, 234 Ark. 826, 354 SW2d 707 ..... 9a, 11a, 20a

Toombs v. Fortson, N. D. Ga., 241 F. Supp. 65 ..... 15, 30a, 34a

WMCA, Inc. v. Lomenzo, 377 U.S. 633 ..... 4, 1a, 29a

Wesberry v. Van Driver, N.D. Ga., 206 F. Supp. 276, 376 U.S. 1 ..... 15, 30a

Yancey v. Faubus, E.D. Ark., 238 F. Supp. 290 2, 27a

Constitutional and Statutory Provisions:

Federal Constitution:
Amendment XIV 3, 7, 8, 9, 17, 19, 20, 1a, 25a, 26a, 44a

Federal Statutes:
28 U.S.C.A. 1253 ..... 4, 45a

28 U.S.C.A. 1343 (3) and (4) 3, 4, 45a

28 U.S.C.A. 2201 ..... 3, 46a

28 U.S.C.A. 2202 ..... 3, 46a

28 U.S.C.A. 2281 ..... 3, 3a, 46a

28 U.S.C.A. 2284 ..... 3, 3a

42 U.S.C.A. 1983 ..... 3, 47a

42 U.S.C.A. 1988 ..... 3, 47a

Arkansas Constitution:
Amendment 23 ..... 5a, 6a, 8a, 13a, 14a

Amendment 45 ..... 2, 3, 7, 2a, 5a, 7a, 8a, 9a, 19a, 22a, 25a, 28a, 42a, 49a

IN THE

Supreme Court of the United States

October Term, 1965

CRAWFORD COUNTY BAR ASSOCIATION, BY FINES F. BATCHELOR, JR., PRESIDENT, DAVID O. PARTAIN, VICE-PRESIDENT and N. D. EDWARDS, SECRETARY-TREASURER: and CECIL L. ALEXANDER ..... *Appellants,*

v.

ORVAL E. FAUBUS, GOVERNOR, KELLY BRYANT, SECRETARY OF STATE and BRUCE BENNETT, ATTORNEY GENERAL, as THE BOARD OF APPORTIONMENT of the STATE OF ARKANSAS ..... *Appellees*

On Appeal From the United States District Court for the Eastern District of Arkansas

JURISDICTIONAL STATEMENT APPELLANT CRAWFORD COUNTY BAR ASSOCIATION

This is an appeal by Crawford County Bar Association ~~and Cecil L. Alexander~~ from the judgment and opinion of the United States District Court for the Eastern District of Arkansas, entered on November 4, 1965, while setting as a Three-judge Statutory Court especially invoked by the provisions of 28 U.S.C.A. Section 2281. This state is submitted by Appellants, Crawford County Bar Association, to show that the Supreme Court of the United States has jurisdiction

of the appeal and that a substantial Federal question is presented.

OPINIONS BELOW

The United States District Court for the Eastern District of Arkansas, Western Division, on January 28, 1965, entered its Decree and Memorandum Opinion holding that portion of Amendment 45 to the Arkansas Constitution setting up Legislative Districts for both Houses of the Arkansas Legislature was unconstitutional and void, and issued mandatory injunction requiring Redistricting both Houses of the Arkansas Legislature in accordance with the 14th Amendment to the United States Constitution, which opinion is reported in 283 F. Supp. 290, and no appeal was taken from such judgment, the opinion being attached to this Statement as Appendix A, infra at page 1a, and the judgment of this Court with reference thereto is attached to this Statement as Appendix B, infra at page 25a. The opinion of the District Court approving the plan for Redistricting both Houses of the Arkansas Legislature submitted by the Board of Apportionment is not reported, this opinion is attached to this Statement as Appendix C, infra at page 27a, and contains as a part thereof, the Redistricting plan approved by the District Court, and the judgment of the Court with reference to such opinion is attached to this Statement as Appendix D, infra at page 42a.

JURISDICTION

This suit was brought attacking a portion of Amendment 45 to the Arkansas Constitution, requesting restraining order to prevent holding of elections under this unconstitutional provision and for man-

datory injunction to require the Redistricting of both Houses of the Arkansas Legislature in accordance with the 14th Amendment to the United States Constitution, the suit having been brought under 42 U.S.C.A. Sections 1983 and 1988; under 28 U.S.C.A. Sections 1343 (3) and 1343 (4); and under 28 U.S.C.A. Sections 2201 and 2202, and in accordance with the provisions of 28 U.S.C.A. Sections 2281 and 2284, a Three-judge District Court was ordered.

On January 28, 1965, the Three-judge District Court issued its judgment declaring the attacked portion of Amendment 45 to the Arkansas Constitution invalid and violative of the United States Constitution, granting mandatory injunction directing Board of Apportionment to formulate and file with the Court plan of Districting both Houses of the Arkansas Legislature in accordance with Amendment 14 to the United States Constitution, and no appeal was taken therefrom.

Within the time designated by the Court, as extended, the Board of Apportionment filed with the Court a plan of Districting both Houses of the Arkansas Legislature, to which plan appellants objected and with leave of Court filed interventions wherein it was alleged that the Board of Apportionment had not complied with the mandatory injunction of the District Court or with the 14th Amendment to the United States Constitution in its Districting Plan, praying injunctive and other relief. The Three-judge District Court entered its judgment and rendered its memorandum opinion herein on November 4, 1965, denying relief prayed by appellants and holding that the Districting plan filed by the Board of Apportionment was

valid and constitutional under Fourteenth Amendment to the United States Constitution, and Notice of Appeal to this Court was filed on November 26, 1965. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C.A. Section 1253, and the following are representative cases which sustain the jurisdiction of the Supreme Court to review this judgment on appeal:

Reynolds v. Sims, 377 U.S. 533, 12 L. Ed. 2d 506, 84 S. Ct. 1362; *Lucas v. Colorado General Assembly,* 377 U.S. 713, 12 L. Ed 2d 632, 84 S. Ct. 1472; *Roman v. Sincock,* 377 U.S., 12 L.Ed. 2d 620, 84 S. Ct. 1462; *Maryland Committee for Fair Representation v. Tawes,* 377 U.S. 656, 12 L.Ed. 2d 595, 84 S. Ct. 1443; *WMCA, Inc. v. Lomenzo,* 377 U.S. 633, 12 L.Ed. 2d 568, 84 S. Ct. 1418; *Davis v. Mann,* 377 U.S. 678, 12 L.Ed. 2d 609, 84 S. Ct. 1453.

QUESTIONS PRESENTED

The State of Arkansas has been districted so that both Houses of its bicameral legislature have some one county, one member districts; some one county, multi-member districts; some multi-county, one member districts; and some multi-county, multi-member districts, and in several instances a county, or counties, with more population than the one-county, one-member districts, have been placed in districts with much larger counties, with no safeguard to insure either an effective vote, or a right to elect one of its number to the State Legislature. This practice is questioned as being violative of the 14th Amendment to the United States Constitution.

The districts of both Houses of the Legislature

set up by the Arkansas Board of Apportionment, and approved by the District Court formed on the basis that no county should be divided in the formation of districts, that the districts be formed of one or more contiguous counties, and that in setting up the districts they would be Constitutional so long as the variance from the ideal population did not exceed 15 percent either above or below, but that any variance which would exceed 15 percent either above or below the ideal population per member would be unconstitutional under any and all circumstances, and but for such assumption, Crawford County, Arkanssa, which had a population variance of 19 percent over the population of the ideal per member unit, would have been set up as a one-county, one-member district in the Arkansas House of Representative, and various other districts probably would have been set up differently but for the Board's assumption as to requirements of the United States Constitution, and appellants question both the assumption of the Board of Apportionment, and its actions based upon these assumptions which we respectfully submit are fallacious.

As an aid to both the Arkansas Board of Apportionment and the Courts, appellants, while being interested only in having constitutional rights of themselves and others similarly situated, have suggested two possible plans of Redistricting, one being the setting up of the State of Arkansas into 100 one-member units, with reference to the Arkansas House of Representatives, each unit containing approximately 17,860 inhabitants. The other suggested plan would provide for, as nearly as possible, setting the state up on the basis of counties, providing one representative to each county for each member that its population entitles it to, and them

granting to those counties, and where necessary districts, whose fractional population more nearly entitles it to an additional representative, forming counties which have too little population to entitle them to a representative of their own, into multi-county, one-member units with no less total population than the population entitling other counties to a representative, or to an additional representative. Since the Board of Apportionment has questioned the validity of the above proposed plans would be of valuable aid not only to those redistricting the State of Arkansas, but also other states complying with the United States Constitution.

STATUTES INVOLVED

This appeal does not question the validity of any statute or treaty, but does involve Amendment 45 to the Arkansas Constitution and action thereunder.

STATEMENT OF THE CASE

This action was originally brought July 15, 1964, by the plaintiff, Yancey, against the Governor, Secretary of State and Attorney General of the State of Arkansas, in their official capacity as "The Board of Apportionment" created under Amendment 45 to the Arkansas Constitution, attacking the validity of the portion of this Amendment which provided for apportionment of members of both Houses of the State Legislature, and prayed both for declaration of invalidity of the questions portion of the Arkansas Amendment and injunction against apportionment with respect to such invalid amendment, together with prayer for mandatory injunction to require redistricting or reapportionment of the State of Arkansas in accordance with the United States Constitution, Yancey alleging

therein that he was a resident of and was domiciled in Pulaski County, Arkansas, and brought this action upon behalf of himself and as a class action.

The Three-judge District Court held, based upon stipulations and pre-trial proceedings, that the questioned portion of the Arkansas Constitution violated the provisions of Amendment 14 to the United States Constitution and were, therefore, invalid, and issued its mandatory injunction requiring the Board of Apportionment to redistrict both Houses of the Legislature of Arkansas in accordance with the 14th Amendment to the United States Constitution, the new apportionment to be effective not later than the November election of 1964.

The Arkansas Supreme Court in the case of *Faubus v. Kinney,* 239 Ark. 443, 389 SW2d 887 (1965) held that Amendment 45 was severable and the invalidity of the portion which was violative of the United States Constitution did not invalidate the remainder of the Amendment.

July 15, 1965, within the time provided by the Three-judge District Court, as extended, the Board of Apportionment filed proposed Redistricting plan for both Houses of the Arkansas Legislature, to which plaintiff objected and appellants, with leave of the Court, filed interventions objecting to the Reapportionment plan filed, alleging it to be violative of the 14th Amendment to the United States Constitution and the rights of intervenors, and others similarly situated individuals who were domiciled in and residents of the State of Arkansas, and praying injunctive and other relief. This matter was presented to the

Three-judge District Court on October 1, 1965, upon pleadings, stipulations and oral arguments, after all parties had previously filed briefs, and upon the Court's approval of the Redistricting plan as filed with it, denying injunctive and other relief prayed by appellants, this appeal follows.

The Redistricting plan presented to and approved by the Court is attached to this Jurisdictional Statement as a part of Appendix C, infra at page 37a.

THE QUESTIONS BEFORE THE SUPREME COURT ARE SUBSTANTIAL

The questions presented herein for determination by the Supreme Court are substantial, and of utmost importance not only to the people of the State of Arkansas, but to all other states which have legislatures districted contrary to the provisions of Amendment 14 to the United States Constitution and who must redistrict their states in order to comply with this Amendment.

REDISTRICTING IN ONE COUNTY, ONE MEMBER DISTRICTS; MULTI COUNTY, ONE MEMBER DISTRICTS; ONE COUNTY, MULTI MEMBER DISTRICTS; AND MULTI COUNTY, MULTI MEMBER DISTRICTS.

In redistricting both Houses of the Arkansas Legislature, we find that in each instance the Board of Apportionment has provided for some one-county, one-member district; some one-county, multi-member districts; some multi-county, one member districts; and some multi-member, multi-county districts.

Some of the Multi-county, multi-member districts in the House of Representatives, the district number, county name and populations are as follows:

11, Greene with 25,198 and Craighead with 47,303; 12, Crawford with 21,318 and Sebastian with 66,685; 23, White with 32,745 and Lonoke with 24,511; 29, Lee with 21,001 and Phillips with 43,997; 32, Saline with 28,956 and Hot Springs with 21,893;

and counties which form a one-county, one-member district listed below by district number, county and population are as follows:

3, Boone with 16,116; 10, Lawrence with 17,267; 15, Independence with 20,048; 21, Conway with 15,430; 25, Monroe with 17,327; Cross with 19,551; 34, Hempstead with 19,661; 43, Drew with 15,213; and 44, Chicot with 18,990.

It will be noted that each of the above nine one-county, one-member districts are smaller than the smallest counties in the above five multi-county, multi-member districts. The Three-judge District Court tells us at page 7 (Appendix C, page 33a) of its memorandum opinion of November 4, 1965, "The Constitution does not require that a person residing in a particular county of a multi-county district be represented in the Legislature by a citizen of his own county." We are told, therefore, that the 14th Amendment to the United States Constitution does not mean that the people of Crawford County, or any one of the above five smaller counties in the multi-county, multi-member districts have the same rights as the people in Drew County, or the other one-county, one-member districts.

Appellants respectfully submit that under the equal protection clause of the 14th Amendment to the

United States Constitution, if the 15,213 inhabitants of Drew County are entitled to have a citizen of their county represent them in the Arkansas House of Representatives, that certainly the 21,318 residents of Crawford County would have a like right, which right is not guaranteed if the 21,318 inhabitants of Crawford County must compete with the 66,685 inhabitants of Sebastian County for each one of the five representative positions granted to District 12. Not only this, but each representative that runs in the 12th District must receive approximately five and one-half times as many votes to be elected to Arkansas House of Representatives as the candidate running in Drew County. Certainly Chief Justice Warren in his majority opinion in the case of *Reynolds v. Sims,* 377 U. S. 533, 12 L. Ed. 2d 506, 84 S. Ct. 1362 when he states at the following places:

> U.S. @ 556, L. Ed 2d @ 524, in footnote 29, "There is more to the right to vote than the right to mark a piece of paper and drop it in a box or the right to pull a lever in a voting booth. The right to vote includes the right to have the ballot counted . . . It also includes the right to have the vote counted at full value without dilution or discount . . . That federally protected right suffers substantial dilution . . . (where a) favored group (h) as full voting strength . . . (and) the groups not in favor have their votes discounted."
>
> And at U.S. @ 560 and L. Ed, 2d 526, "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even more basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right."

Also in the same decision Chief Justice Warren states: "Nevertheless, Wesberry clearly established that the fundamental principle of representative government in this country is one of equal representation for equal numbers of people, without regard to race, sex, economic status, or *place of residence within a state.*" (Emphasis supplied).

At U.S. @ 563, L. Ed. 2d 528, we find, "The resulting discrimination against those individual voters living in disfavored areas is easily demonstrable mathematically. Their right to vote is simply not the same right to vote as that of those living in a favored part of the State. Two, five, or 10 of them must vote before the effect of their vote is equivalent to that of their favored neighbor. Weighing the votes of the citizens differently, by any method or means, merely because of where they reside, hardly seems justifiable. One must be ever aware that the Constitution forbids 'sophisticated as well as simple-minded modes of discrimination.' ".

At U.S. @ 565 and L. Ed. 2d @ 529, Chief Justice Warren again says, "Since the achieving of fair and effective representation for all citizens is concededly the basic aim of legislative apportionment, we conclude that the Equal Protection Clause guarantees the opportunity for equal participation by all voters in the election of state legislators. Diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discrimination based upon factors such as race, . . . ".

Appellants respectfully submit that under the Redistricting plan approved by the District Court, that the inhabitants of the smaller counties in the multi-county, multi-member state representative districts,

such as the 11th, 12th, 14th, 23rd, 29th, 32nd, and other districts, have neither the favored position, an equal right to vote, or an equal right to hold the office of member of the State Legislature as those of such favored one-county, one-member districts as the 3rd, 10th, 15th, 21st, 25th, 26th, 34th, 43rd, and 44th, nor does the weight of the vote of any resident of any multi-member district have the same weight in the election of any state representative as the vote of an individual in the one-county, one-member district.

To say that the voter in Crawford County, or the candidate for the House of Representatives from Crawford County has an equal right with the residents of Sebastian County, is to say that it is as good to have one-fourth of a vote as it is to have three-fourths of a vote when it takes one-half or more of that vote to elect any indivdual.

Under the plan of Redistricting of the State of Arkansas which is being attacked here, 20 counties (excluding Pulaski County, our largest and which has approximately 13 percent of the state's total population) with 38.2 percent of the state's total population will control 51 percent of the total membership of the Arkansas House of Representatives. These include two single-county, multi-member districts and eighteen multi-county districts in which one county contains 59.9 percent or more of the total population of the district, and the counties comprising this select group of 20 are: Mississippi County, District 18; and Crittenden County, District 23, the single county districts; and Pope County, District 4; Baxter County, District 5; Clay County, District 6; Johnson County, District 8; Craighead County, District 11; Sebastian County, Dis-

trict 12; Faulkner County, District 14; Jackson County, District 16; Polk County, District 19; Garland County, District 20; Arkansas County, District 24; Phillips County, District 29; Jefferson County, District 33; Clark County, District 35; Dallas County, District 36; Columbia County, District 39; Union County, District 41; and Ashley County, District 42. To say that a county which has approximately 60 percent, or more, of the total population of an entire district cannot, and will not with a reasonable degree of certainty, control the entire district in political elections, is to ignore our entire history and the inherent self-pride of hometown, county, state and nation, and would require that we completely disregard the previous experience of counties involved in other districts with the same neighboring counties.

MATHEMATICAL FORMULA

Admittedly, in redistricting both houses of the Arkansas Legislature, the Board of Apportionment set up a rigid mathematical standard for evaluating constitutional validity. Formula was as follows:

1. No county in the State of Arkansas was to be divided or placed in more than one district in either house of the Legislature.

2. Legislative districts were to be formed, with reference to both Houses, of one or more continguous counties.

3. Any deviation from the ideal population per legislative district, 17,860 for each member of the House of Representatives and 51,028 for each member of the Senate, would be constitutionally valid if the

deviation from the ideal population did not exceed 15 percent above or before, but any greater deviation would be constitutionally invalid.

The use of this strict formula is further pointed out by the stipulation of the Board of Apportionment that had it believed a deviation of as much as 19 percent above the ideal population would have been constitutionally valid, Crawford County, Arkansas, with a population entitling it the 1.19 state representatives would have been set up as a one-county, one-member district for election of members of the Arkansas House of Representatives.

That no other legally valid criteria was considered in determining the makeup of the various legislative districts might be noted both from the memorandum opinion of the District Court at Page 5 of its memorandum opinion, appearing herein in Appendix C at Page 27a where the Court stated, "There are indeed instances where a district is not comprised of the most compatable counties, based on their diverse geographic and policial composition.", and from an examination of the physical and economic makeup of the various areas. For demonstration purposes only, we will consider Crawford, Sebastian, Cleburne, Van Buren, and Faulkner Counties. Crawford County is predominately a rural, agricultural county with its industries primarily geared to agriculture, to-wit, canning plants, soy bean oil plant and a few industries allied to the furniture manufacturing industry. Sebastian County is predominately urban and industrial, with industries geared more nearly to consumer items. With reference to Van Buren and Cleburne Counties, we find that these are predominately rural upland areas of a live-

stock raising type agriculture, while Faulkner County is much more nearly an urban county with its industry and bottom land type agricultural areas being geared to the Arkansas River Development Program. We mention these specific counties because appellants are much more familiar with them, but respectfully submit that these are representative, and not isolated instances.

At page 4 of the District Court's memorandum opinion, Appendix C, page 30a, the District Court stated, "While a number of variations are substantial, none of them exceed the 15 percent suggested as tolerable in *Toombs v. Fortson,* N. D. Ga., 241 F. Supp. 65, and *Wesberry v. Van Diver,* N. D. Ga., 206 F. Supp. 276, rev'd. on other grounds, *Wesberry v. Van Diver,* 376 U. S. 1." Appellants respectfully submit that under the decisions of this Court, neither the Toombs nor Wesberry case are valid authority for holding that a 15 percent deviation, or variation is the maximum constitutionally permissable. Wesberry is a case concerned with reapportionment of a state for election of members of the United States House of Representatives, and this Court in *Reynolds v. Sims,* 377 U. S. 533, 12 L. Ed. 2d 506, 84 S. Ct. 1364, and @ 578 in the United States Reports and @ 537 in the Law Edition 2d states:

> "Somewhat more flexibility may, therefore, be constitutionally permissable with respect to State Legislative apportionment than in Congressional Districting."

While certain District Courts have attempted to set up some uniform formula, based upon rigid mathematical standards in determining the constitutional

validity of State Legislative reapportionment, this Court has repeatedly held from the Reynolds case throughout that " . . . the problem does not lend itself to any such uniform formula, and it is neither practicable nor desirable to establish rigid mathematical standards for evaluating the constitutional validity of a State Legislative apportionment scheme under the Equal Protection Clause. Rather, the proper judicial approach is to ascertain whether, under the particular circumstances existing in the individual state whose Legislative reapportionment is at issue, there has been a faithful adherence to a plan of population based representation, with such minor deviations only as may occur in recognizing certain factors that are free from any taint or arbitrariness or discrimination." *Roman v. Sincock,* 377 U. S. 695, 12 L. Ed. 2d 620, 84 S. Ct. 1462.

It will be noted that in the Roman case, this Court was referring to a case where the lower Court had held that while a deviation of 1.5 to 1 would meet minimal constitutional requirements, that a greater deviation would be too extreme to be constitutionally suitable, but it will be noted that this Court refused to agree that a variation of more than 1.5 to 1 would be too great a deviation to meet the constitutional requirements.

In the case of *Lucas v. Colorado General Assembly,* 377 U. S. 713, 12 L. Ed. 2d 632, 84 S. Ct. 1472, this Court, while reversing the case for other reasons, would not say that, where proper circumstances existed, a deviation of 1.7 to 1 would necessarily be unconstitutional.

In the instant case, we have squarely before this

Court the question of whether a deviation in excess of 15 percent above or below the ideal population for a State Legislative district can, under any circumstances be constitutional, in that the Board of Apportionment has stipulated that if, under any circumstances, a deviation of as much as 19 percent above the ideal population for a State Legislative district, that under its plan of apportionment, Crawford County, Arkansas, is entitled to, and will, under its plan, become a one-county, one-member state House of Representative District, and in addition to this, that other districts would probably be differently set up.

ADDITIONAL GUIDELINES

As additional guidelines in protecting the constitutional rights of citizens of the State of Arkansas, and of the entire United States in general, under the Equal Protection Clause of the 14th Amendment to the United States Constitution, but without suggesting these as the only solutions, since appellants are interested only in guaranteeing to themselves and others in similar positions, rights under the 14th Amendment to the United States Constitution, if the following plans, or either of them, can be constitutionally used in apportioning state Legislatures, the guideline will be very helpful in protecting rights of various citizens.

It is suggested by one of the appellants that the State of Arkansas should, being a bicameral legislative state, have at least one house of its Legislature, the House of Representatives, since the State Senate is set

up otherwise, divided into 100 one-member districts, without regard to county lines, so that there would be 100 legislative house districts, each composed of a population of approximately 17,860 inhabitants.

It has further been suggested that, at least the Arkansas House of Representatives, could constitutionally be districted on a basis of assigning to each county with 17,860 residents, or equal multiples thereof, one State Representative for each 17,860 inhabitants, and divide the remaining members of the State House of Representatives between the counties, on the basis of one representative to each county or unit most nearly entitled to an additional representative, based upon the population ratio, forming counties too small to be set up as a one county unit, because of insufficient population, into multi-county units, assigning to them one representative on a basis of population of not less than the population which entitles an individual county to an additional representative, or a county to an additional representative.

The latter plan is set out here for determination, since the states have traditionally and historically been set up in county, or other similar state subdivisions, which ordinarilly have not only historical and economical interests of a similar nature, but also have other factors binding them together as a unit and if such a plan can be constitutionally established, permitting the states, within reasonable bounds of equal representation for equal population, to retain, at least to a large extent, counties as political sub-divisions for all governmental functions, including legislative representation, much benefit can be derived.

CONCLUSION

In conclusion, it is respectfully submitted that where both Houses of bicameral state legislatures are permitted to be set up on the basis of some districts having a one-county, one-member district; some counties having a one-county, multi-member district; some districts having a multi-county, one-member district; and others having a multi-county, multi-member district, this plan best fits itself to gerrymandering, and arrives at a result where large segments of the entire population are deprived of any effective voice in their state legislative body, and therefore, are deprived of the right to have a voice in the passing of laws under which they must live.

The Arkansas Redistricting Plan approved by the Three-judge United States District Court was set up under a rigid mathematical standard of deviation of 15 percent or less being constitutional, while deviation of more than 15 percent would, under any circumstance, be unconstitutional, and is violative of the 14th Amendment to the United States Constitution and in complete opposition to this Court's express instructions in the Roman case where it stated, " . . . the problem does not lend itself to such uniform formula, and it is neither practicable nor desirable to establish rigid mathematical standards for evaluating the constitutional validity of the state legislative apportionment scheme under the Equal Protectional Clause.", and further are in opposition to the Roman and Lucas cases where this Court was not willing to hold that a deviation of 1.5 to 1 or even 1.7 to 1, would be unconstitutional under any and all circumstances. The Board of Apportionment has stipulated that if, under any circumstances, a deviation of as much as 19 percent would be consti-

tutionally valid, that Crawford County, Arkansas, should be set up as a one-county, one-member district rather than being placed in a district with Sebastian County, Arkansas, and that various other districts probably should be set up differently.

It is respectfully submitted that the Supreme Court has jurisdiction, and should hear this appeal and reverse the Court below with instructions to require the Arkansas Board of Apportionment, by mandatory injunction, to legally district the State of Arkansas for membership in the Arkansas Legislature, in accordance with the provisions of the 14th Amendment to the United States Constitution, and in event of the failure of the Board of Apportionment to comply with this mandatory injunction, that the District Court formulate a constitutional districting plan for both houses of the Arkansas Legislature and by mandatory injunction require the Board of Apportionment to place this plan into effect. Questions herein are important to the constitutional and valid districting of States with reference to membership in the state legislative branch and for the equal protection of citizens and residents of the State of Arkansas under the 14th Amendment to the United States Constitution.

Respectfully submitted,

FINES F. BATCHELOR, JR.
Attorney for Appellant,
Crawford County Bar Association
411 Main
Van Buren, Arkansas

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

JOHN YANCEY ..... *Plaintiff*)
v.) **LR-64-C-96**
ORVAL E. FAUBUS, GOVERNOR)
KELLY BRYANT, SECRETARY OF STATE) **Memorandum**
BRUCE BENNETT, ATTORNEY GENERAL)
"THE BOARD OF APPORTIONMENT",) **Opinion**
Defendants.)

Thorp Thomas of Little Rock, Arkansas, for Plaintiff.

Bruce Bennett, Attorney General, State of Arkansas, and Jack L. Lessenberry, Chief Assistant Attorney General, Little Rock, Arkansas, for Defendants.

HENLEY, Chief District Judge.

On June 15, 1964, the Supreme Court of the United States handed down a series of decisions, hereinafter referred to as the Reapportionment Cases, holding in substance that the Equal Protection Clause of the 14th Amendment to the Constitution of the United States requires hat the membership of each house of a bicameral State legislature be apportioned so that, as nearly as practicable, each member of the respective houses represents the same number of people. *Reynolds v. Sims,* 377 U.S. 533; *WMCA, Inc. v. Lomenzo,* 377 U.S. 633; *Maryland Committee For Fair Representation v. Tawes,* 77 U.S. 656; *Davis v. Mann,* 377 U.S. 678; *Roman v. Sincock,* 377 U.S. 695; *Lucas v.*

Colorado General Assembly, 377 U.S. 713. Those decisions were foreshadowed by *Baker v. Carr*, 369 U.S. 186, decided in 1962, holding that the federal courts have jurisdiction with respect to controversies relating to State legislative apportionment.

On July 15, 1964, plaintiff herein, John Yancey, a citizen and qualified elector of Pulaski County, Arkansas, the State's most populous county, commenced this action against the Governor of Arkansas, the Arkansas Secretary of State, and the Arkansas Attorney General, attacking the existing apportionment of the membership of both houses of the Arkansas Legislature which is currently meeting in its 65th biennial session. The defendants collectively comprise the Board of Apportionment created by section 1 of Amendment 45 to the 1874 Constitution of Arkansas for the purpose of making decennial reapportionments of both the Arkansas Senate and House of Representatives in the manner prescribed by sections 2 and 3 of the Amendment.

The complaint, as amended, alleges in substance that the scheme of apportionment and reapportionment prescribed by Amendment 45 does not meet the standard laid down by the Supreme Court of the United States in the Reapportionment Cases, supra, and is invalid, and that for the same reason the present apportionment of the membership of the Legislature is invalid.[1] The prayer of the complaint is that sections 2 and 3 of the Amendment, hereinafter abstracted, be declared unconstitutional, and that the Board be re-

---

[1] Plaintiff does not challenge the right of the present Legislature to function as a legislative body.

quired by this Court to effect a constitutional reapportionment of both the House and the Senate.

In its answer the Board denies that sections 2 and 3 of the Amendment are unconstitutional, and prays that the complaint, as amended, be dismissed.

Since the complaint challenged the constitutionality of a State constitutional provision and prayed for an injunction against the continued enforcement of that provision, a statutory court of three judges was convened pursuant to 28 U.S.C.A., §§2281, 2284, and the case has been submitted to that Court.

Federal subject matter jurisdiction is not questioned and has been established. It has been admitted or stipulated that plaintiff has standing to maintain the action, that the defendants constitute the Board of Apportionment to which reference has been made, and that the validity of the existing apportionment of the membership of the Arkansas Legislature is to be determined by reference to the United States Census for 1960. The materials before the Court include maps, agreed to be accurate, on whichare depicted the seventy-five counties of the State, the population of each County according to the 1960 census, the twenty-six senatorial districts into which the State is subdivided, the number of representatives which each County has in the House, and the number of senators which each senatorial district has in the Senate. Other facts relevant to decision are such that judicial notice may be taken of their existence.

Prior to hearing, the defendants filed a motion for a stay of the instant proceedings for the purpose of

permitting reapportionment litigation in the State courts to be initiated and prosecued to conclusion. That motion was pending when a pre-trial conference was held before the single judge to whose docket the case fell originally, and the pre-trial conference order provided that the motion for a stay and the merits of the case would be considered at a single hearing which was set for January 7, 1965.

On January 6, 1965, Hon. Clark Kinney, a member of the Arkansas House of Representatives from St. Francis County, commenced a suit against the Board in the Chancery Court of Pulaski County seeking to determine the present status of the Board and seeking to require it to make a constitutional reapportionment of the Legislature.

The hearing in this case was held on January 7. The plaintiff appeared in person and by counsel; the Board appeared by the Attorney General. At the commencement of the hearing the Board renewed its motion to stay on the basis of the Kinney litigation which has been mentioned. Plaintiff resisted the motion.

The proceedings at the hearing consisted of steps necessary to perfect the record before the Court and of oral arguments both on the motion to stay and on the merits. At the conclusion of the hearing both the motion and the merits were taken under advisement.

So far as the motion to stay is concerned, the Court does not see that any useful purpose would be served by withholding decision at this time on the basic federal question of whether the existing scheme of apportion-

ment and the existing apportionment of the membership of the Arkansas Legislature are constitutionally valid. On the contrary, the Court is convinced that it is in the best interest of all concerned for this Court to adjudicate that question now. Whether the Court should go beyond that adjudication will be discussed in connection with the merits of the case. The motion for a stay of proceedings, as such, will be denied.

The Arkansas Legislature consists of a House of Representatives at 100 members, and a Senate of 35 members. At least in practice, each Representative and each Senator has one vote in his respective House. All of the Constitutions of Arkansas[2] have provided for periodic reapportionments of the Legislature on the basis of population. The responsibility for reapportionment was originally placed upon the Legislature itself, but in 1936 the voters of Arkansas adopted Amendment 23 which created a Board of Apportionment and place in its hands the duty of reapportioning both House of the Legislature following each federal census, but with an initial reapportionment to be made in 1937. Acting under Amendment 23 the Board made its 1937 reapportionment and also reapportioned in 1941 and 1951. In 1956 Amendment 23 was superseded by Amendment 45 here in controversy.

As indicated, section 1 of the Amendment establishes the Board and charges it with the duty of making reapportionments. Section 2 provides that the House shall consist of 100 members with one member

---

[2] The original Constitution of 1836, Article IV; the Constitution of 1861, Article IV; the Constitution of 1864, Article IV; the Constitution of 1868, Article V; and the present Constitution of 1874, Article 8.

guaranteed to each of the State's 75 counties regardless of population. The remaining 25 seats in the House are to be equally distributed, as nearly as practicable, among the more populous counties "in accordance with a ratio to be determined by the population of said counties as shown by the federal census next preceding any apportionment hereunder."

Section 3 of Amendment 23 had directed that the membership of the Senate, like that of the House, be reapportioned on the basis of population with each Senator representing, as nearly as practicable, an equal number of people. Section 3 of Amendment 45, however, provides that the senatorial districts as now constituted and existing as directed by the Supreme Court of Arkansas in the case of *Pickens v. The Board of Apportionment*, 220 Ark. 145, 246 S.W. 2d 556, "shall remain the same and the number of Senators from the districts shall not be changed."

Section 4 of the Amendment provides that the Board shall file its report with the Secretary of State not later than February 1 of the year immediately following each federal census. Section 5 authorizes the Supreme Court of Arkansas by mandamus or otherwise to compel the Board to do its duty. That section also authorizes the Supreme Court in original proceedings to review Board action and to revise arbitrary or capricious apportionments, provided that such proceedings are instituted within 30 days after the report of the Board is filed with the Secretary of State.

Section 6 of the Amendment provides that at the next general election following a reapportionment Representatives shall be elected in accordance therewith,

and that Senators "shall be elected henceforth according to the apportionment now existing, and their respective terms of office shall begin on January 1 next following." That section also provides that the terms of Senators shall be of four years duration.

The case of *Pickens v. The Board of Apportionment* mentioned in section 3 of Amendment 45 was an exercise by the Supreme Court of the power of revision conferred by section 5 of the then existing Amendment 23. The Board had made a reapportionment in 1951 following the 1950 census, but made no change in the distribution of Senate seats. The Supreme Court held that certain changes had to be made, and put those changes into effect.

When the Supreme Court in *Pickens* made changes in the distribution of Senate seats, section 6 of Amendment 23 came into play. That section, as construed in *Bailey v. Abington*, 201 Ark. 1072, 148 S.W. 2d 176, and *Butler v. Democratic State Committee*, 204 Ark. 14, 160 S.W. 2d 494, required that following any apportionment which resulted in changes in the make-up of the Senate, the entire Senate had to be classified by lot with one class of 18 Senators having terms of two years and the other class of 17 Senators having terms of four years.[3]

When the Supreme Court of Arkansas changed the distribution of Senate seats in 1951, the Senators

---

[3] In 1941 the Board did not change the original reapportionment which it had made in 1937, and it was held in **Bailey** and **Butler** that since there had been no changes made by the Board in senatorial apportionment, there was no necessity for a classification of Senators under section 6 of Amendment 23.

had to be classified under section 6 of Amendment 23, and some Senators who had been elected at the General Election of 1950 ostensibly for terms of four years found their terms foreshortened and were required to run again in 1952 rather than in 1954. Since Amendment 45 is a substantial reenactment of Amendment 23, as far as the House is concerned, it is at least inferable that the purpose of its enactment was to protect Senators from future experiences with section 6 of Amendment 23.

The practical effect of Amendment 45 is to freeze permanently the distribution of Senate seats on the basis of the distribution of the State's population as of 1950. In other words, under Amendment 45 the Senate is no longer subject to reapportionment. As to the House, apportionment, while based on population, is limited by the guarantee of at least one Representative to every county and by the limitation of the membership of the House to 100. Thus, while the House can be reapportioned, the reapportionment is limited to 25 free seats.

Following the census of 1960 the Board in 1961 apportioned the House seats using a method designed to make as few changes as possible in the existing apportionment. The 25 free seats were distributed among 16 counties as follows:

County	Population	Guaranteed Seat	Apportioned Seats
Pulaski	242,980	1	7
Jefferson	81,373	1	2
Mississippi	70,174	1	2

Sebastian	66,685	1	2
Washington	55,797	1	1
Union	49,518	1	1
Crittenden	47,564	1	1
Craighead	47,303	1	1
Garland	46,697	1	1
Phillips	43,997	1	1
Benton	36,272	1	1
St. Francis	33,303	1	1
White	32,745	1	1
Miller	31,686	1	1
Ouachita	31,641	1	1
Poinsett	30,834	1	1
		16	25

The Board's apportionment of the House seats was challenged under section 5 of Amendment 45, and was revised by the Supreme Court of Arkansas in *Stevens v. Faubus,* 234 Ark. 826, 354 S.W. 2d 707. The Court held that the Board had misconceived its function in undertaking to make as few changes as possible, and stated that it was the function of the Board to make changes and not to preserve the status quo. The Court also held, in line with its earlier decision in *Shaw v. Adkins,* 202 Ark. 856, 153 S.W. 2d 415, that the House seats available for apportionment should be apportioned in a manner similar to that employed in apportioning members of the federal House of Repre-

sentatives where each State is guaranteed at least one member.

The Court then proceeded to apportion the 25 free seats by employing the formula approved in *Shaw v. Adkins,* supra. Under the Court's apportionment the 25 free seats went to twelve counties, hereinafter called apportioned counties, as shown by the following table:

County	Population	Guaranteed Seat	Apportioned Seats
Pulaski	242,980	1	10
Jefferson	81,373	1	3
Mississippi	70,174	1	2
Sebastian	66,685	1	2
Washington	55,797	1	1
Union	49,518	1	1
Crittenden	47,564	1	1
Craighead	47,303	1	1
Garland	46,697	1	1
Phillips	43,997	1	1
Benton	36,272	1	1
St. Francis	33,303	1	1
		12	25

According to the federal census reports, the population of Arkansas declined during the decade between 1950 and 1960 from 1,909,511 to 1,786,272, and this

decline was reflected in almost all of the 75 counties. However, the population of six individual counties increased. The heaviest increase was in Pulaski County which jumped from approximately 197,000 in 1950 to 242,980 in 1960. Other counties whose population increased during the period in question were Crittenden, Jefferson, Saline, Sebastian, and Washington.

Not only was there a decline in the overall population of the State, there was also a marked shift in population from rural to urban areas. Again according to the census, while the State as a whole lost 6.5 percent of its population, the population of all urban areas increased by 21.4 percent, whereas the population of rural areas declined by 20.2 percent. Manifestly, this shift in population from the rural to the urban areas of Arkansas cannot, under Amendment 45, be reflected in the make-up of the Senate, and it can be reflected in the make-up of the House only to the extent that the 25 free seats can be allocated to the more populous counties under the "equal proportions" method of distribution approved in *Shaw v. Adkins* and *Stevens v. Faubus,* both supra.

In the first of the Reapportionment Cases, *Reynolds v. Sims,* supra, the Supreme Court of the United States said (p. 568 of 377 U.S.):

> "We hold that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis."

It was also said (p. 577 of 377 U.S.):

> "By holding that as a federal constitutional requisite both houses of a state legislature must be

apportioned on a population basis, we mean that the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal protection as is practicable. We realize that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters. Mathematical exactness or precision is hardly a workable constitutional requirement."

It was recognized in *Sims* that a State may deviate somewhat from a strict population basis of apportionment for the purpose of "insuring some voice to political subdivisions, as political subdivisions." 377 U.S. 581.

But the Court warned:

" * * * Carried too far, a scheme of giving at least one seat in one house to each additional subdivision (for example to each county) could easily result in many States in a total subversion of the equal-population principle in that legislative body. This would be especially true in a State where the number of counties is large and many of them are sparsely populated, and the number of seats in the legislative body being apportioned does not significantly exceed the number of counties. Such a result, we conclude would be constitutionally impermissible. And careful judicial scrutiny must of course be given, in evaluating state apportionment schemes, to the character as well as the degree of deviations from a strict population basis. But if, even as a result of a clearly rational state policy of according some legislative representation to political subdivisions, population is submerged as the controlling consideration in the apportionment of seats in the particular legislative body, then the right of all of the State's citizens

to cast an effective and adequately weighted vote would be unconstitutionally impaired." (Ibid.)

I.

Accepting, as we must, the decisions of the Supreme Court of the United States as ruling here, it is clear to us that the apportionment of the membership of the Arkansas Senate required by Amendment 45 is unconstitutional.

In considering the apportionment of the Senate it is noted that prior to the adoption of Amendment 45 the Arkansas Senate was, at least theoretically, apportioned on the basis of population with the qualifications that the senatorial districts should be "convenient," that they should be made up of contiguous territory, and that no county should be divided in the formation of a senatorial district.

In *Butler v. Democratic State Committee,* supra, the Court stated (p. 19 of 204 Ark.):

> " * * * The purpose of [Amendment 23] was, of course, to secure equal and fair representation in the General Assembly upon the basis of proportionate population. It was recognized that a census of the state's population would be taken by the federal government every ten years, and it was contemplated and required that the adjustment or apportionment of representation should be based upon this census, and it was made the imperative duty of the Board of Apportionment to make apportionment of representatives and senators after the taking of each federal census. No discretion was vested in the Board as to whether this duty should be performed. * * * "

Again, in *Smith v. The Board of Apportionment*, supra, it was said (pp. 613-614 of 219 Ark.):

> "The comprehensive measure affecting senatorial districts prior to 1937 was Act 129 of 1901, p. 201. * * * Section 2 of Art. 8 of the Constitution of 1874 was a mandate to the legislature to divide the state into convenient districts from time to time in such manner that the senate would be based upon the state's adult population, each senator as nearly as practical to represent an equal number of male inhabitants. The districts were created, temporarily as it was then thought, until the population of counties as reflected by the Federal census of 1880 should become available as the basis of a better plan.
>
> "Amendment No. 23 imposes upon the * * * Board the *imperative* duty of making assignments of senators to districts as created. Section 3 fixes membership of the senate at 35. Districts shall consist of contiguous territory, but a county must not be divided. With these limitations upon the one hand and affirmative mandates upon the other, the state is to be divided into convenient districts '. . . in such manner that the senate shall be based upon the inhabitants of the state, each senator representing, as nearly as practicable, an equal number thereof, [and] each district shall have at least one senator.' It will be noted that some of the language of the Amendment is so harmonious with certain expressions in § 2 of Art. 8 of the Constitution as to suggest that the phrasing was copied."

By Act 29 of 1901 the State was divided into 34 senatorial districts. Under that Act the 10th District consisted of Pulaski and Perry Counties, and it was allotted two senators. All of the other districts had one each. As pointed out in *Smith*, supra, 219 Ark.

at 614, the membership of the Senate was not reapportioned after 1901 until Amendment 23 became effective in 1937. In that year the districts were rearranged, and Pulaski County became a senatorial district to itself and was allotted two senators. No change was made in 1941. In 1951 the Supreme Court in both *Smith* and *Pickens* recognized that population changes throughout the State made it imperative that there be a change in the make-up of the Senate.

The Court divided the State into 26 senatorial districts.[4] Seven of those districts were allotted more than one Senator, and the remaining 19 districts were given one apiece. It was this apportionment which was frozen into the Constitution by Amendment 45, and is the one with which we are now concerned.

Using population alone as a bisis for allocating Senate seats, and taking 1,786,000 as a round population figure for Arkansas in 1960, the "natural" or "ideal" ratio for the allocation of such seats is one Senator for every 51,028 people. Five of the existing senatorial districts approach that ratio very closely; the remaining twenty-one depart from it rather widely, in instances extremely, in both directions.

The five districts coming closest to the ideal ratio are: The 13th District consisting of Union County alone; the population of Union County is 49,518, there is one seator, so the ratio is one to 49,518. The 18th District consisting of Izard, Independence, and Jack-

---

[4] The **Pickens** apportionment appears in the table set out at pages 151-152 of 220 Ark.; see also the map of the State divided into senatorial districts which appears at page 153 of 220 Ark.

son Counties, having a population in 1960 of 49,657 and one Senator; the ratio is one to 49,657. The 24th District consisting of Craighead, Mississippi, and Poinsett Counties, having a population of 148,311 and three Senators; the ratio is one to 49,437. The 25th District, consisting of Cross, Crittenden, and St. Francis, having a 1960 population of 100,418 and two Senators; the ratio is one to 50,209. The 26th District consisting of Monroe, Lee, Phillips, and Arkansas Counties, having a population of 105,680 and two Senators; the ratio is one to 52,840.

On the other hand, the 15th District consisting of Pulaski County alone with a 1960 population of 242,980 had only three Senators, the ratio being one to 80,993. The 4th District consists of Sebastian County alone and has been allotted one Senator. The 1960 population of Sebastian County, which includes the City of Fort Smith, was 66,685 so that the 4th District's ratio was one to 66,685. The ratio in the 2nd District is one to 64,865. The 12th District, consisting of Ouachita and Columbia Counties, has a ratio of one to 58,041. The 11th District, consisting of Garland, Saline, Hot Springs, and Clark Counties, had a 1960 population of 118,496 and two Senators; the ratio for that District is one to 59,248. All of the districts mentioned in this paragraph are seriously under-represented in the Senate.

Other districts with one or two Senators are more or less over-repreesnted. This over-representation may be summarized as follows:

District	Counties	Number Senators	Population	Ratio One to	Percent of Over-Representation Approximate
1st	Benton Carroll	1	47,556	47,556	6
3rd	Crawford Franklin Johnson	1	43,952	43,952	14
5th	Logan Scott Yell Montgomery	1	40,564	40,564	20
6th	Polk Howard Sevier Little River	1	42,226	42,226	17
7th	Pike Hempstead Nevada	1	38,225	38,225	25
8th	Miller LaFayette	1	42,716	42,716	16
9th	Boone Marion Baxter Newton Searcy	1	46,187	46,187	9
10th	Pope Conway Perry	1	41,534	41,534	18

District	Counties	Number Senators	Population	Ratio One to	Percent of Over-Representation Approximate
14th	Stone Van Buren Cleburne Faulkner	1	46,884	46,884	8
16th	Grant Dallas Bradley Cleveland Calhoun	1	45,780	45,780	10
17th	Fulton Randolph Sharp Lawrence	1	42,763	42,763	16
19th	White Lonoke Woodruff Prairie	2	81,765	40,887	19
20th	Jefferson Lincoln	2	95,820	47,910	6
21st	Drew Desha	1	35,983	35,983	29
22nd	Ashley Chicot	1	43,210	43,210	15
23rd	Clay Greene	1	46,456	46,456	9

From the figures that have been given it is apparent that the five districts in which the ratios most

closely approach the ideal ratio contain 453,584 persons, or approximately 25 percent of the population of the State, and have allotted to them nine of the 35 Senate seats.[5] The under-represented districts have a population of 551,067 or about 31 percent of the total State population, and control eight seats. And the over-represented districts containing 781,721 persons or about 44 percent of the population control 18 of the 35 Senate seats. Thus, a minority of the people controls the Senate.

The disparities which existed in the Senate apportionment in 1961 were greater than they were in 1951, and the disparities which exist today are probably more glaring than those which existed four years ago because the population shift to the urban areas apparently is continuing. So long as Amendment 45 remains in force those disparities cannot be corrected no matter how much the Board may be inclined to correct them.

In the light of the requirement of the Apportionment Cases that State senatorial districts be so constructed that each Senator represents, as far as practicable, the same number of people, the apportionment prescribed by section 3 of Amendment 45 simply cannot stand.

II.

Nor do we think that the apportionment of the Arkansas House of Repreesntatives meets the consti-

---

[5] Some of the districts which most closely approach the ideal ratio are in fact over represented to some extent and others are under represented to some extent.

tutional standard laid down by the Supreme Court of the United States.

In 1930 the population of Arkansas in round figures was 1,854,000; in 1940 it was 1,949,000. In the decade between 1940 and 1950 the population declined to 1,910,000, and, as indicated, by 960 it was down to 1,786,000.

Acting pursuant to Amendment 23 the Board apportioned the House in 1937 on the basis of the 1930 census, and kept the same apportionment in effect following the census of 1940. The Board, of course, allotted one House seat to each of the 75 counties. It then apportioned the 25 free seats as follows: Pulaski County, six; Mississippi, Sebastian, Jefferson, and Union Counties, two each; Craighead, Phillips, Crittenden, Garland, Washington, White, Benton, St. Francis, Hempstead, Miller, and Lonoke Counties, one each.

The Board's 1937 apportionment does not appear to have been challenged in the Supreme Court, but there was such a challenge with respect to the 1941 apportionment. *Shaw v. Adkins, Governor,* supra. The Supreme Court of Arkansas after giving careful consideration to the problem revised the Board's action so as to give Mississippi and Poinsett Counties an additional seat each and so as to take away a seat each from Lonoke and Union Counties.

In 1951 the Board reapportioned the House and made certain changes in the allocation of the free seats.[6]

---

[6] The Board's 1951 apportionment is set forth in the table appearing in **Stevens v. Faubus,** supra, 234 Ark. at 830.

The 1961 apportionment of the House by the Board, which apportionment was revised by the Court in Stevens, supra, was very little different from the 1951 apportionment notwithstanding Arkansas' loss of population and the shift of population to the more populous counties.

The natural ratio of representation in the House, based on the 1960 census, is one representative to every 17,860 people. The actual ratio in what we have called the "apportioned counties" is one Representative to every 22,207 people, about 25 percent above the ideal; and the actual ratio in the unapportioned counties is one Representative for every 15,311 people or about 14 percent below the ideal. In other words, the apportioned counties, particularly Pulaski, are seriously under represented, and the less populous unapportioned counties are substantially over represented. The apportioned counties, which have a combined population of 821,663 or about 46 percent of the State's total, control 37 of the 100 House seats, and the unapportioned counties, having about 54 percent of the population, control 63 of those seats.

The county-to-county disparity in ratio is glaring indeed as is evident from even a casual glance at a list of the 75 counties with their 1960 populations. A few examples will suffice. In Pulaski County the ratio is one Representative to 22,089 people, whereas in Perry County, the smallest in the State from the standpoint of population, the ratio is one to 4,927. In Baxter County the ratio is one to 9,943; in Howard County it is one to 10,878; in Marion County it is one to 6,041; in Mississippi County, which has two Representatives,

the ratio is one to 37,087; in Searcy County it is one to 8,124; and in Sebastian County it is one to 33,343.

While the House membership, unlike that of the Senate, is flexible to some extent, we are convinced that the present guarantee of one Representative each to the smaller counties without regard to population, and the 100 member litigation on the size of the House effectively prevent equality of representation on the basis of population.

III.

There remains for consideration the question of whether we should undertake to grant any mandatory relief at this time and, if so, the nature and extent of the relief to be granted. In approaching this question it is well to keep in mind that the only defendants before us are the members of the Board of Apportionment; no other State agency is before the Court.

Our decision that Amendment 45's apportionment of the membership of the Legislature is unconstitutional immediately raises serious questions of State constitutional law which, if answered ultimately, must be answered by the Supreme Court of Arkansas. While the members of this Court may think that they know the answers to those questions, no opinion which we might express would be more than a forecast as to what the Supreme Court of Arkansas eventually might hold. Some or perhaps all of the answers may be produced in connection with the Kinney litigation in the Chancery Court which has been mentioned.

In view of the situation just outlined, we admit the temptation to go no further at this time than to

declare the existing apportionment scheme unconstitutional, leaving it to the State, including the Judicial Branch of its Government, to bring about a valid reapportionment as best it can.

We do not think, however, that in a case of this importance we should stay our hand, particularly in view of the fact that whatever reapportionment there is to be should take place and be tested in time to be the basis for the 1966 general election which will take place in November of that year. Cf. *Maryland Committee v. Tawes,* supra, 77 U.S. at 676.

The Board of Apportionment is before the Court, and whether rightly or wrongly the Board is taking the position that it has or probably has the power to make a valid reapportionment. Since the Board takes this position, we think that it should be directed and it will be directed, to come forth with a valid scheme of apportionment not later than June 15 of the current year. If it develops ultimately that the Board has no such power as a matter of State law, the Court can then take such steps as may seem necessary or appropriate in the circumstances, including the addition of other parties defendant if such a course seems necessary or desirable.

The Court is aware that the Legislature is now in session, and the Court is aware also that the possibility of that body taking some action itself in the field of reapportionment is being discussed rather widely. Our directive to the Board to proceed to make a reapportionment by June 15 is certainly without prejudice to the right of the Legislature to take such action in the field as it may deem to be proper or judicious.

After all, this Court is not directly concerned at this time with what body brings about a valid reapportionment, nor is it concerned with what particular scheme may be adopted ultimately provided that the chosen scheme meets the constitutional requirement laid down by the Reapportionment Cases.

An appropriate decree will be entered. Jurisdiction of the case will be retained for such further proceedings herein as may be justified or required.

Dated this 28 day of January, 1965.

Pat Mehaffy
United States Circuit Judge

J. Smith Henley
United States District Judge

Gordon E. Young
United States District Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

JOHN YANCEY ..... *Plaintiff*	)	
v.	)	LR-64-C-96
ORVAL E. FAUBUS, GOVERNOR	)	
KELLY BRYANT, SECRETARY OF STATE	)	
BRUCE BENNETT, ATTORNEY GENERAL	)	
"THE BOARD OF APPORTIONMENT",	)	
Defendants.	)	

DECREE

Pursuant to memorandum opinion this day filed herein, it is by the Court CONSIDERED, ORDERED, ADJUDGED, and DECREED that the existing apportionment of the membership of the House of Representatives and of the Senate of the State of Arkansas and the method of apportionment of the membership of those bodies prescribed by Sections 2 and 3, respectively, of Amendment No. 45 to the Constitution of Arkansas of 1874 be, and they hereby are, declared to be constitutionally invalid and void and violative of the Equal Protection Clause of the 14th Amendment to the Constitution of the United States as construed by the Supreme Court of the United States in the Reapportionment Cases referred to in said memorandum opinion.

It is further CONSIDERED, ORDERED, ADJUDGED, and DECREED that the defendants and their successors in office be, and they hereby are, man-

datorily enjoined, directed, and required to undertake to formulate and put into effect a reapportionment of the membership of the House of Representatives and of the Senate of the Arkansas Legislature which will meet the requirements of the Equal Protection Clause of the 14th Amendment to the Constitution of the United States, as construed in the aforesaid Reapportionment Cases, the work of the Board to be completed not later than June 15, 1965.

The Court retains jurisdiction of this cause for such other and further proceedings as may appear necessary or appropriate.

Dated this 28 day of January, 1965.

Pat Mehaffy
United States Circuit Judge

J. Smith Henley
United States District Judge

Gordon E. Young
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

JOHN YANCEY ..... *Plaintiff*)
v.) **LR-64-C-96**
ORVAL E. FAUBUS, GOVERNOR)
KELLY BRYANT, SECRETARY OF STATE) **Memorandum**
BRUCE BENNETT, ATTORNEY GENERAL)
"THE BOARD OF APPORTIONMENT",) **Opinion**
Defendants.)

Before MEHAFFY, Circuit Judge, HENLEY, Chief District Judge, and YOUNG, District Judge.

PER CURIAM.

On January 28, 1965, this Court held that the scheme of apportionment of the membership of the Arkansas Legislature prescribed by sections 2 and 3 of Amendment 45 to the 1874 Constitution of the State of Arkansas was unconstitutional, and that defendants, members of the Board of Apportionment created by section 1 of that Amendment, would be required to prepare and put into effect a constitutional reapportionment of both the House of Representatives and the Senate. *Yancey v. Faubus,* E. D. Ark., 238 F. Supp. 290. An appropriate decree was entered from which there was no appeal.

On May 17, 1965, the Supreme Court of Arkansas held that as a matter of State constitutional law our

decision that the former plan of apportionment was invalid did not affect adversely other sections of the Amendment, and that the Arkansas Legislature would continue to consist of a House of Representatives of 100 members and of a Senate of 35 members, and that the Board of Apportionment had the authority under section 1 of the Amendment to make a valid reapportionment. *Faubus v. Kinney,* 239 Ark. 443, 389 S.W. 2d 887. [1]

On July 15 of the current year the Board, in obedience to our decree, filed a plan of reapportionment, which plan is set forth as Appendix A to this opinion. The plan was filed originally with this Court and not with the Secretary of State of the State of Arkansas as provided by section 4 of Amendment 45. While the written record before us does not expressly reflect that the plan has ever been filed with the Secretary of State, we have been advised informally that it was in fact filed with the Secretary after it was filed here.

In due course the plaintiff, John Yancey, a citizen and qualified elector of Pulaski County, filed objections to the plan. Objections have also been filed by intervenors, Cecil L. Alexander and Mac Evans, members of the Arkansas House of Representatives from Cleburne and Van Buren Counties, respectively, and by representatives of the Crawford County Bar Association. Plaintiff objects generally to the plan;

---

[1] In the original proceedings in this Court the Board asserted that it possessed the power to reapportion otherwise than was provided by sections 2 and 3 of Amendment 45, and we took the Board at its word. The matter was discussed in our original opinion. Pages 300-302 of 238 F. Supp.

the objections of the intervenors are not only general but also specific to the extent that the plan affects the House representation of Cleburne, Crawford, and Van Buren Counties.

The objections have been heard upon documentary evidence, prehearing briefs, and oral argument.

Under the prior apportionment the State of Arkansas contained 75 House districts, with each of the 75 counties being a district; the Senate was made up of members from 26 districts, and the districts and the membership of the Senate were "frozen" on the basis of distribution of Arkansas' population according to the census of 1950.

Under the new plan the State has 44 House districts and 25 Senate districts. Some of the districts of both types contain more than one county and some of both types are to be represented by more than one member.

The record before us reflects, and we find, that in preparing and submitting its plan the Board undertook in good faith to make a valid reapportionment of the Legislature in conformity with the principles laid down in what we have called the Reapportionment Cases,[2] which require that both houses of a bi-cameral State legislature be apportioned, insofar as practicable, so that each member of each house represents approximately the same number of people, but permitting

---

[2] **Reynolds v. Sims,** 377 U. S. 533; **W.M.C.A., Inc. v. Lomenzo,** 377 U.S. 633; **Maryland Committee for Fair Elections v. Tawes,** 377 U. S. 656; **Davis v. Mann,** 377 U. S. 678; **Roman v. Sincock,** 377 U. S. 695; **Lucas v. Forty-Fourth Colorado General Assembly,** 377 U. S. 713.

limited consideration to be given to other relevant factors such as geography, political subdivisions, and the like. The political philosophy underlying those decisions is frequently referred to by the slogan, "one man, one vote."

We further find that the Board in making its reapportionment gave primary consideration to population, as it was required to do; however, the Board in constituting the new districts undertook to respect county lines and to create districts of convenient size and numerous enough to insure maximum representation to the largest possible number of individual counties.

The reapportionment was made with reference to the 1960 census, according to which the ideal or normal ratio for House membership was one Representative for every 17,860 people and one Senator for every 51,028 people. Bearing in mind the Board's approach to the problem, it was inevitable that the plan which the Board produced involved variations in both directions from the ideal ratios for both Houses. While a number of the variations are substantial, none of them exceeds the 15 percent suggested as tolerable in *Toombs v. Fortson,* N. D. Ga., 241 F. Supp. 65, and *Wesberry v. Vandiver,* N. D. Ga., 206 F. Supp. 276, rev'd. on other grounds, *Wesberry v. Vandiver,* 376 U. S. 1.

In attacking the plan the objecting parties contend generally that in creating multi-county and multi-member districts for both Houses the Board acted unconstitutionally, and that the Board's adherence to county lines in creating the respective districts created such disparities of population among the several dis-

tricts as to violate the "one man, one vote" philosophy of the Reapportionment Cases.

It is further contended by the intervenors that the inclusion of smaller counties, such as Cleburne, Crawford, and Van Buren, in districts containing one or more counties of large populations in effect disenfranchises the voters in the smaller counties and unconstitutionally discriminates against those voters.

The Board denies that any of those contentions possess merit.

At the outset of discussion we will say that it is not our function to effect revisions of the plan when such revisions are unnecessary to satisfy constitutional requirements. We further recognize that the question is not whether the plan adopted by the Board is the best that could be devised. There are indeed instances where a district is not comprised of the most compatible counties, based on their diverse geographic and political compositions. In fact, it defies imagination to contrive a scheme that would meet with everyone's satisfaction. Moreover, the constitutionality of the plan cannot be measured fairly by reference to isolated, individual examples. We must determine whether the Board has in good faith fashioned a reapportionment plan complying with the rulings of the United States Supreme Court. The Board was faced with a difficult task due to the unequal distribution of the population of the State, in that a solution to one problem might well have given rise to others of equal or greater seriousness. In performing its task, the Board was entitled to some measure of administrative or legislative discretion, and in the permissible area of

such discretion we will not substitute our judgment for that of the Board.

In appraising the plan it is our duty to look at it as a whole, to consider its rationality, its historical basis, and its overall conformity or lack of conformity to the requirement that each Representative and each Senator must represent substantially the same number of people so that the vote of each voter will ultimately have approximately the same weight as that of every other voter.

We first consider and reject the contention that the plan is automatically unconstitutional because both Houses will consist in part of multi-member and multi-county districts. We see nothing unconstitutional about a legislative district, whether a House district or a Senate district, consisting of more than one county, or about a county containing more than one legislative district. Cf. *Fortson v. Dorsey,* 379 U.S. 433. In *Simms v. Reynolds,* supra, 377 U.S. at 577, the Court recognized that at least one house may have some multi-member districts; and we do not think that such recognition implies a requirement that the other house *must* have only single-member districts. If the apportionment of the membership of a bi-cameral State legislature meets other constitutional tests, we do not think that it is rendered invalid merely because there are multi-member and multi-county districts in both houses. We recognize that this question is not free from doubt, and, of course, if the Supreme Court of the United States holds ultimately that at least one house must be made up of single member districts, the Arkansas Legislature will have to be reapportioned

again. But, we are not prepared to anticipate such a holding.

In behalf of Cleburne, Crawford, and Van Buren Counties, as individual counties, it is argued that citizens of those counties will probably be unable to elect representatives who reside therein, and that Faulkner County will monopolize both seats in the 14th District, and that Sebastian County will monopolize the five seats in the 12th District.

Those arguments are fallacious. The Constitution does not require that a person residing in a particular county of a multi-county district be represented in the Legislature by a citizen of his own county. Under the Board's plan the votes in a multi-county district are cast on a district-wide basis, and election is determined by a district-wide majority or plurality. The representatives chosen to represent the district will represent all of the people of the district. And, it is not necessarily true that the voters residing in the more populous counties of a district will customarily or consistently refuse to support candidates from the less populous counties of the district.

We think that the Board was justified rationally and historically in constructing the reapportioned Legislature along county lines and did not act arbitrarily or capriciously in forming the districts themselves.

The most serious objection made to the plan arises from the variations from the ideal House and Senate

ratios of members to people which the plan permits, and it is those variations which have given us our principal concern.

It has been stipulated that the Board considered that the Reapportionment Cases permit a variation of not more than 15 percent above or below the ideal ratios, and it is contended here by the objecting parties that the Board deliberately used the maximum variation supposedly permitted in determining the composition of districts and the number of Representatives or Senators to be allotted to each district. In other words, it is contended that the Board unlawfully employed a "built-in" variation for the purpose of avoiding the requirement of equal representation based on population. Cf. *Toombs v. Fortson*, supra, 241 F. Supp. at 70.

We do not think that the Board's action can fairly be so appraised. When the Board decided to respect the integrity of the counties and to lay out the districts with reference to county lines, variations in district populations followed automatically. It must have been obvious to the Board that population variations between and among the counties of Arkansas would be reflected in deviations in both directions from the ideal ratios in the respective districts, and it appears to us that the Board simply felt that the variations were tolerable if they did not exceed 15 percent either way.

It is quite true, as counsel point out, that a variation of not more than 15 percent or any other variation is not permitted automatically by the 14th Amend-

ment. But, the authorities do suggest that a deviation of not more than 15 percent either way is tolerable, and in general the deviations involved in the plan under consideration are substantially less than 15 percent.

In general, the Senate deviations are not great, and in only one District is the 15 percent figure approached closely. In four of the 25 Districts the deviation from the ideal is less than one percent. The average variation in the 13 over represented Senate Districts is 4.97 percent, and the average variation in the 12 under represented Districts in that House is 4.61 percent. The spread between those average variations is 9.58 percent.

Deviations from the ideal ratio are somewhat more marked in the House than in the Senate. In the House the average over representation is about 6.84 percent, and the average under representation is about 6.65 percent. Those variations from the ideal do not greatly exceed either way the Senate variations, but the spread is wider, being 13.49 percent.

We recognize that in both Houses there are individual variations both above and below the averages, but with its imperfections, the plan is certainly an improvement over the apportionment which existed prior to the Board's action, and the Board's plan goes far toward correcting the imbalance in representation of the rural over the urban areas of the State which brought about the litigation in the first place. We are persuaded that the plan should be given our approval.

A decree will be entered approving the plan, overruling the objections of plaintiff thereto, and dismissing the intervenors. Each side will bear its own costs.

Dated this 4 day of November, 1965.

Pat Mehaffy
United States Circuit Judge

J. Smith Henley
United States District Judge

Gordon E. Young
United States District Judge

APPENDIX A

EXHIBIT A

HOUSE OF REPRESENTATIVES

District	County	No. of Representatives	Total Population	Variance
1	Benton	2	36,272	1.5 %
2	Carroll & Madison	1	20,352	13.93%
3	Boone	1	16,116	9.77%
4	Marion, Searcy & Pope	2	35,342	1.07%
5	Baxter, Fulton	1	16,600	7.07%
6	Randolhp, Clay	2	33,778	5.42%
7	Washington	3	55,797	4.11%
8	Newton, Johnson	1	18,384	2.91%
9	Stone, Izard, Sharp	1	19,379	8.49%
10	Lawrence	1	17,267	3.34%
11	Greene, Craighead	4	72,501	1.46%
12	Crawford, Sebastian	5	88,003	1.47%
13	Franklin, Logan, Yell	2	38,110	6.67%
14	Van Buren, Cleburne, Faulkner	2	40,590	13.6 %
15	Independence	1	20,048	12.22%

EXHIBIT A (Continued)

District	County	No. of Representatives	Total Population	Variance
16	Jackson, Woodruff	2	36,797	2.99%
17	Poinsett	2	30,834	13.69%
18	Mississippi	4	70,174	1.79%
19	Scott, Polk	1	19,278	7.91%
20	Montgomery, Garland	3	52,067	2.84%
21	Conway	1	15,430	13.6 %
22	Perry, Pulaski	13	247,907	6.75%
23	White, Lonoke	3	57,296	6.91%
24	Prairie, Arkansas	2	33,870	5.19%
25	Monroe	1	17,327	3.00%
26	Cross	1	19,551	9.44%
27	St. Francis	2	33,303	6.78%
28	Crittenden	3	47,564	11.24%
29	Lee, Phillips	4	64,998	9.03%
30	Sevier, Little River	1	19,367	8.41%
31	Howard, Pike	1	18,742	4.91%
32	Saline, Hot Spring	3	50,849	5.11%
33	Grant, Jefferson	5	89,669	.39%
34	Hempstead	1	19,661	10.05%

EXHIBIT A (Continued)

District	County	No. of Representatives	Total Population	Variance
35	Clark, Nevada	2	31,650	11.41%
36	Dallas, Cleveland	1	17,466	2.22%
37	Lincoln, Desha	2	35,217	1.42%
38	Miller	2	31,686	11.31%
39	Lafayette, Columbia	2	37,430	4.76%
40	Ouachita	2	31,641	11.43%
41	Calhoun, Union	3	55,509	3.57%
42	Bradley, Ashley	2	38,249	7.05%
43	Drew	1	15,213	14.83%
44	Chicot	1	18,990	6.39%

EXHIBIT B

SENATE

District	County	No. of Senators	Total Population	Variance
1	Benton, Carroll	1	47,556	6.81%
2	Washington	1	55,797	9.32%
3	Madison, Crawford, Franklin, Johnson	1	53,020	3.88%
4	Sebastian, Scott, Logan, Polk	2	101,920	.14%
5	Howard, Sevier, Hempstead, Nevada	1	51,395	.07%
6	Pike, Clark, Dallas, Grant	1	47,630	6.67%
7	Montgomery, Garland	1	52,067	2.02%
8	Pope, Yell, Conway, Perry	1	53,474	4.77%
9	Boone, Marion, Baxter, Newton, Searcy	1	46,187	9.5 %
10	Saline, Hot Spring	1	50,849	.36%
11	Little River, Miller, Lafayette	1	51,927	1.74%
12	Ouachita, Columbia	1	58,041	13.72%

EXHIBIT B (Continued)

District	County	No. of Senators	Total Population	Variance
13	Union	1	49,518	2.97%
14	Stone, Van Buren, Cleburne, Faulkner	1	46,884	8.13%
15	Fulton, Izard, Sharp, Randolph Lawrence	1	49,529	2.95%
16	Independence, White	1	52,793	3.44%
17	Jackson, Woodruff, Prairie	1	47,312	7.29%
18	Pulaski, Lonoke	5	267,531	4.83%
19	Cleveland, Calhoun, Bradley, Ashley	1	51,184	.28%
20	Jefferson, Lincoln	2	95,820	6.12%
21	Monroe, Lee, Arkansas, Phillips	2	105,680	3.53%
22	Desha, Drew, Chicot	1	54,973	7.71%
23	Clay, Greene	1	46,456	8.97%
24	Craighead, Mississippi, Poinsett	3	148,311	3.12%
25	Cross, Crittenden, St. Francis	2	100,418	1.62%

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

JOHN YANCEY ..... *Plaintiff*

v. LR-64-C-96

ORVAL E. FAUBUS, GOVERNOR,
KELLY BRYANT, SECRETARY OF STATE,
BRUCE BENNETT, ATTORNEY GENERAL,
"THE BOARD OF APPORTIONMENT",
NATHAN GORDON, LT. GOVERNOR OF
THE STATE OF ARKANSAS AND PRESIDENT
OF THE SENATE AND J. H. COTTRELL, JR.,
SPEAKER OF THE HOUSE OF REPRESENTATIVES
OF THE STATE OF ARKANSAS ..... *Defendants*

DECREE

Pursuant to memorandum opinion this day filed herein, IT IS CONSIDERED, ORDERED, ADJUDGED and DECREED that the plan of reapportionment of the membership of the Senate and House of Representatives of the General Assembly of the State of Arkansas submitted by defendants as members of the Board of Apportionment established by Amendment 45 to the Constitution of the State of Arkansas, be, and it hereby is, approved and is to be put into effect not later than the General Election to be held in November, 1966, that is to say that members of both Houses of the 66th General Assembly of the

State of Arkansas must be elected in conformity with the Board's plan.

Objections of plaintiff to the plan are overruled and the interventions filed herein and dismissed. Each side is to bear its own costs.

/s/ Pat Mehaffy
United States Circuit Judge

/s/ J. Smith Henley
United States District Judge

/s/ Gordon E. Young
United States District Judge

APPENDIX E

United States Constitution
Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * * *

APPENDIX F

Federal Statutes

28 U.S.C.A. 1253 Supreme Court — Jurisdiction

§ 1253. *Direct appeals from decisions of three-judge courts*

Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding by any Act of Congress to be heard and determined by a district court of three judges. June 25, 1948, c. 646, 62 Stat. 926.

28 U.S.C.A. 1343 District Courts — Jurisdiction

§ 1343. *Civil rights and elective franchise*

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

* * *

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote. June 25, 1948, c. 646, 62 Stat. 932; Sept. 3, 1954,

c. 1263, § 43, 68 Stat. 1241; Sept. 9, 1957, Pub. L. 85-315, Part III, §121, 71 Stat, 637.

28 U.S.C.A. 2201 Declaratory Judgments

§ 2201. *Creation of remedy*

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. June 25, 1948, c. 646, 62 Stat. 964; May 24, 1949, c. 139, § 111, 63, Stat. 105; Aug. 28, 1954, c. 1033, 68 Stat. 890; July 7, 1958, Pub. L 85-508, § 12(p), 72 Stat. 349.

28 U.S.C.A. 2202 Declaratory Judgments — Further Relief

§ 2202. *Further relief*

Further necessary or proper relief based on a declatory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment. June 25, 1948, c. 646, 62 Stat. 964.

28 U.S.C.A. 2281 Three Judge Courts

§ 2281. *Injunction against enforcement of State statute; three judge court required*

An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title. June 25, 1948, c. 646, 62 Stat. 968.

42 U.S.C.A. 1983 Civil Rights

§ 1983. *Civil action for deprivation of rights*

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. R. S. § 1979.

42 U.S.C.A. 1988 Civil Rights

§ 1988. *Proceedings in vindication of civil rights*

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in con-

formity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. R. S. § 722.

APPENDIX G

Arkansas Constitution

Amendment Forty-five

§ 1. *Board of apportionment created — Powers and duties.*

A Board to be known as "The Board of Apportionment," consisting of the Governor (who shall be Chairman), the Secretary of State and the Attorney General is hereby created and it shall be its imperative duty to make apportionment of representatives in accordance with the provisions hereof; the action of a majority in each instance shall be deemed the action of said board.

§ 2. *One hundred members in house of representatives — Apportionment.*

The House of Representatives shall consist of one hundred members and each county existing at the time of any apportionment shall have at least one representative; the remaining members shall be equally distributed (as nearly as practicable) among the more populous counties of the State, in accordance with a ratio to be determined by the population of said counties as shown by the Federal census next preceeding any apportionment hereunder.

§ 3. *Senatorial districts — Thirty-five members of senate.*

The Senate shall consist of thirty-five members.

Senatorial districts as now constituted and existing, as heretofore directed by the Supreme Court of Arkansas in the case of *Pickens v. Board of Apportionment,* 220 Ark. 145, 246 S. W. 2d 556, shall remain the same and the number of Senators from the districts shall not be changed.

§ 4. *Duties of board of apportionment.*

On or before February 1, immediately following each Federal census, said Board shall reapportion the State for Representatives, and in each instance said Board shall file its report with the Secretary of State, setting forth (a) the basis of population adopted for representatives; (b) the number of representatives assigned to each county; whereup after 30 days from such filing date, the apportionment thus made shall become effective unless proceedings for revision be instituted in the Supreme Court within said period.

§ 5. *Mandamus to compel board of apportionment to act.*

Original jurisdiction (to be exercised on application of any citizens and taxpayers) is hereby vested in the Supreme Court of this State (a) to compel (by mandamus or otherwise) the Board to perform its duties as here directed and (b) to revise any arbitrary action of or abuse of discretion by the Board in making such apportionment; provided any such application for revision shall be filed with said Court within 30 days after the filing of the report of apportionment by said Board with the Secretary of State; if revised by the Court, a certified copy of its judgment shall be by the clerk thereof forthwith transmitted to the Sec-

retary of State and thereupon be and become a substitute for the apportionment made by the Board.

§ 6. *Election of senators and representatives.*

At the next general election for the State and County officers ensuing after any such apportionment, Representatives shall be elected in accordance therewith, Senators shall be elected henceforth according to the apportionment now existing, and their respective terms of office shall begin on January 1 next following. Senators shall be elected for a term of four years at the expiration of their present terms of office.